

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LONG, PATRICIA A.,

Plaintiff,

v.

PEND OREILLE COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

No. CV-08-0071-FVS

ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER came before the Court on March 6, 2009, for hearing on Defendants' motions for summary judgment. (Ct. Rec. 8, 17, 38). Plaintiff is proceeding pro se. Defendants Pend Oreille County Sheriff's Department, Gerald Weeks, Eric Schutte and Ronald Froman ("the County Defendants") are represented by Christopher J. Kerley and Michael McFarland. Defendant Jessica Bodey is represented by Thomas M. Smith. Defendant Carol Gaherin is represented by Nicole E. Davis.

BACKGROUND

This lawsuit arises from the entry of private property, owned and occupied by Plaintiff, by two Pend Oreille County Sheriff's Department Deputies, Defendants Ronald Froman and Eric Schutte, a court appointed guardian ad litem ("GAL"), Defendant Jessica Bodey, and Ms. Bodey's court appointed assistant, Defendant Carol Gaherin. The entry was made under the authority of orders issued by Pend Oreille County Superior Court Judge Allen Nielson in the context of guardianship proceedings for 92-year-old Edgar Bush, who lived with Plaintiff before being placed in a long-term care facility in Newport, Washington.

1 **DISCUSSION**

2 **I. Summary Judgment Standard**

3 A moving party is entitled to summary judgment when there are no
4 genuine issues of material fact in dispute and the moving party is
5 entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex*
6 *Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d
7 265, 273-74 (1986). A material fact is one "that might affect the
8 outcome of the suit under the governing law[.]" *Anderson v. Liberty*
9 *Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202
10 (1986). A fact may be considered disputed if the evidence is such
11 that the fact-finder could find that the fact either existed or did
12 not exist. *Id.* at 249, 106 S.Ct. at 2511 ("all that is required is
13 that sufficient evidence supporting the claimed factual dispute be
14 shown to require a jury . . . to resolve the parties' differing
15 versions of the truth" (quoting *First National Bank of Arizona v.*
16 *Cities Serv. Co.*, 391 U.S. 253, 288-89, 88 S.Ct. 1575, 1592, 20
17 L.Ed.2d 569 (1968))).

18 The party moving for summary judgment bears the initial burden of
19 identifying those portions of the record that demonstrate the absence
20 of any issue of material fact. *T.W. Elec. Service, Inc. v. Pac. Elec.*
21 *Contractors Assoc.*, 809 F.2d 626, 630 (9th Cir. 1987). Only when this
22 initial burden has been met does the burden of production shift to the
23 nonmoving party. *Gill v. LDI*, 19 F.Supp.2d 1188, 1192 (W.D. Wash.
24 1998). Inferences drawn from facts are to be viewed in the light most
25 favorable to the non-moving party, but that party must do more than
26 show that there is some "metaphysical doubt" as to the material facts.

1 *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586-87, 106
2 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986).

3 Here, the facts upon which the Court relies are either undisputed
4 or established by evidence that permits but one conclusion concerning
5 the fact's existence.

6 **II. Analysis**

7 Plaintiff brought this civil rights case under 42 U.S.C. § 1983,
8 pro se, alleging the entrance on her property by Defendants was in
9 violation of her rights under the Fourth Amendment. (Ct. Rec. 1).
10 The County Defendants assert that the entry was not violative of the
11 Fourth Amendment and, in any event, the individual County Defendants
12 are protected by absolute and/or qualified immunity. (Ct. Rec. 9).
13 The County Defendants further assert that there is no participant or
14 supervisory liability on the part of Sheriff Weeks and there is no
15 "Monell" liability on the part of the Pend Oreille County Sheriff's
16 Department. (Ct. Rec. 9). Defendants Bodey and Gaherin argue their
17 actions were also not violative of Plaintiff's Fourth Amendment
18 protections, they are entitled to absolute immunity from this action,
19 and they are entitled to the dismissal of the Section 1983 claims
20 against them because they were not state actors when performing their
21 court appointed tasks for Edgar Bush. (Ct. Rec. 18, 39).

22 Section 1983 requires a claimant to prove (1) a person acting
23 under color of state law (2) committed an act that deprived the
24 claimant of some right, privilege, or immunity protected by the
25 Constitution or laws of the United States. *Leer v. Murphy*, 844 F.2d
26 628, 632-33 (9th Cir. 1988). A person deprives another "of a

1 constitutional right, within the meaning of section 1983, if he does
2 an affirmative act, participates in another's affirmative acts, or
3 omits to perform an act which he is legally required to do that causes
4 the deprivation of which the plaintiff complains." *Redman v. County*
5 *of San Diego*, 942 F.2d 1435, 1439 (9th Cir. 1991), *cert. denied*, 502
6 U.S. 1074 (1992); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

7 A complaint must set forth the specific facts upon which the
8 plaintiff relies in claiming the liability of each defendant. *Ivey v.*
9 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Even a liberal
10 interpretation of a civil rights complaint may not supply essential
11 elements of a claim that the plaintiff failed to plead. *Id.* at 268.
12 To establish liability pursuant to Section 1983, Plaintiff must set
13 forth facts demonstrating how each Defendant caused or personally
14 participated in causing a deprivation of Plaintiff's protected rights.
15 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*,
16 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff must present a causal
17 connection between the named defendants and the conduct of which she
18 complains. See *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir.
19 1992).

20 **A. The Officers**

21 **1. Special Needs Exception**

22 Plaintiff complains that Pend Oreille County Sheriff's Department
23 Deputies Eric Schutte and Ronald Froman ("the Officers") violated her
24 Fourth Amendment rights by entering her property and removing personal
25 items without the benefit of a search warrant. (Ct. Rec. 1 ¶ 3). The
26 County Defendants assert that the entry at issue did not violate the

1 Fourth Amendment because the "special needs" exception to the warrant
2 requirement applies. The undersigned agrees.

3 Under the special needs exception, a warrant is not required when
4 "'special needs, beyond the normal need for law enforcement, make the
5 warrant and probable-cause requirement impracticable.'" *Griffin v.*
6 *Wisconsin*, 483 U.S. 868, 873, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987)
7 (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351, 105 S.Ct. 733, 83
8 L.Ed.2d 720 (1985)). If a court determines that such conditions exist,
9 it will "assess the constitutionality of the search by balancing the
10 need to search against the intrusiveness of the search." *Henderson v.*
11 *City of Simi Valley*, 305 F.3d 1052, 1059 (9th Cir. 2002) (citing
12 *Ferguson v. City of Charleston*, 532 U.S. 67, 78, 121 S.Ct. 1281, 149
13 L.Ed.2d 205 (2001)).

14 In *Henderson*, the Ninth Circuit addressed the legality of the
15 entry of a private residence by law enforcement officers and a private
16 citizen in the course of the enforcement of a civil court order.
17 *Henderson*, 305 F.3d at 1052. When the private citizen and the
18 officers arrived at the private residence to retrieve property
19 described in the civil court order, the homeowner was combative, and
20 the officers arrested the homeowner for obstruction. While the
21 homeowner was being transported to the police station, two officers
22 entered the residence to accompany the private citizen while she
23 retrieved the property listed in the civil court order. *Id.* The
24 homeowner subsequently filed a Section 1983 claim alleging her rights
25 had been violated by the illegal entry.

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1 In addressing the homeowner's Fourth Amendment claim, the Ninth
2 Circuit held that the special needs exception to the warrant
3 requirement applied and that the balance of interests in the case
4 demonstrated that the officers' entry into the home did not run afoul
5 of the constitution. *Henderson*, 305 F.3d at 1056-1057. The Court
6 determined that the officers were engaged outside the ordinary needs
7 of law enforcement, requiring the officers to get a warrant would have
8 been superfluous because the officers already had a court order in
9 their possession detailing the relevant restraints imposed and
10 property rights protected, the probable cause requirement was
11 impracticable to the task of maintaining the peace while effectuating
12 the court order, and the officers' actions were limited to
13 accompanying the private citizen while she retrieved the property
14 listed in the court order. *Id.* at 1057-1061.

15 In the instant matter, Jessica Bodey, as court appointed GAL for
16 Edgar Bush, had been frustrated by Plaintiff in her efforts to obtain
17 information concerning the assets and property of Mr. Bush. The
18 "special need" was thus the identification and retrieval of documents
19 that would aid the GAL in identifying and locating Mr. Bush's assets
20 and identifying his treating healthcare providers. The Officers were
21 merely engaged in keeping the peace and facilitating the entry into
22 the private residence so the GAL, pursuant to the civil court order,
23 could identify and retrieve said documents. Like the officers in
24 *Henderson*, the Officers "were serving as neutral third parties acting
25 to protect all parties. The officers did not enter the house to
26 obtain evidence of criminal wrongdoing." *Henderson*, 305 F.3d at 1057.

1 Like *Henderson*, requiring the Officers to get a warrant would have
2 been superfluous as the Officers already had a court order detailing
3 what the GAL needed to accomplish. As noted above, the *Henderson*
4 Court also found that the requirement of probable cause, in the
5 context of a warrant, would weaken the efficacy of the restraining
6 order because probable cause determinations are "peculiarly related to
7 criminal investigations" and are "unsuited to the task of maintaining
8 the peace while effectuating a court order." *Id.* at 1059. The Court
9 finds that the "special needs" exception applies in this case.

10 Because the "special needs" exception is applicable, the Court
11 must next "assess the constitutionality of the search." *Henderson*,
12 305 F.3d at 1059. Once a court determines that the special needs
13 doctrine applies to a search, it must "assess the constitutionality of
14 the search by balancing the need to search against the intrusiveness
15 of the search." *Henderson*, 305 F.3d at 1059 (citing *Ferguson*, 532
16 U.S. at 78). The factors considered are the subject of the search's
17 privacy interest, the government's interests in performing the search,
18 and the scope of the intrusion. *Id.* at 1059-60.

19 The government has an interest in protecting the assets and
20 health of an incompetent person in the context of guardianship
21 proceedings. In addition, the State Judiciary has an interest in
22 maintaining the integrity of court orders issued in the context of
23 guardianship proceedings by ensuring that they are followed. Although
24 the Officers did cut the padlock on the gate to gain access to the
25 property, the Officers "played no active role" in the court authorized
26 inspection and seizure by the GAL and her assistant, they simply stood

1 by to prevent a breach of the peace while the court's order was being
2 implemented. See *Henderson*, 305 F.3d at 1060. Thus, as in *Henderson*,
3 the Officers' conduct "was consistent with their function as keepers
4 of the peace." *Id.* Furthermore, as stated by the *Henderson* Court,
5 there was no evidence the Officers in any way exploited their presence
6 in the residence, or used it as a means of subterfuge. *Id.*

7 While Plaintiff had a reasonable expectation of privacy in her
8 residence, the weight of the government's interest and the limited
9 scope of the Officers' intrusion balances in favor of a finding that
10 the Officers' actions were constitutional. The Court finds that the
11 conduct of the Officers was justified under the "special needs"
12 exception to the warrant requirement. Therefore, the Officers are not
13 liable as a matter of law for the entry and search of Plaintiff's
14 property.

15 **2. Quasi-Judicial Immunity**

16 The Officers are additionally entitled to absolute quasi-judicial
17 immunity for their actions in this case.

18 In *Coverdell v. Department of Social and Health Services*, 834
19 F.2d 758, 764-65 (9th Cir. 1987), the Ninth Circuit articulated the
20 policy behind absolute quasi-judicial immunity as follows:

21 The rationale for immunizing persons who execute court orders is
22 apparent. Such persons are themselves "integral parts of the
23 judicial process." *Briscoe v. LaHue*, 460 U.S. 325, 335, 103
24 S.Ct. 1108, 1116, 75 L.Ed.2d 96 (1983). The fearless and
25 unhesitating execution of court orders is essential if the
26 court's authority and ability to function are to remain
uncompromised. As the First Circuit has explained with respect
to a receiver who acted pursuant to court directives:

"To deny him this [absolute] immunity would seriously encroach on
the judicial immunity already recognized by the Supreme Court . .
. . It would make the receiver a lightning rod for harassing

1 litigation aimed at judicial orders. In addition to the
2 unfairness of sparing the judge who gives an order while
punishing the receiver who obeys it, a fear of bringing down
3 litigation on the receiver might color a court's judgment in some
cases" *Kermit Construction Corp.*, 457 F.2d at 3.

4 *Coverdell*, 834 F.2d at 765.

5 Here, the Officers were executing a facially valid civil court
6 order when they entered Plaintiff's property and stood by while the
7 GAL and her assistant performed the inspection and document retrieval
8 authorized by Judge Nielson, a Pend Oreille County Superior Court
9 Judge. Pursuant to *Coverdell*, the Officers are entitled to absolute
10 quasi-judicial immunity in this case.

11 **3. Qualified Immunity**

12 The Officers are also entitled to qualified immunity for their
13 actions in this matter.

14 Qualified immunity shields government officials, including law
15 enforcement officers, who are performing discretionary functions "from
16 liability for civil damages insofar as their conduct does not violate
17 'clearly established' statutory or constitutional rights of which a
18 reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S.
19 800, 818 (1982); *Harris v. City of Roseburg*, 664 F.2d 1121, 1127 (9th
20 Cir. 1981) (extending the privilege of qualified immunity to police
21 officers).

22 Pursuant to *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151,
23 150 L.Ed.2d 272 (2001),¹ when confronted with a claim of qualified

25 ¹On January 21, 2009, the United States Supreme Court
26 receded from *Saucier* by concluding that courts need not first
determine whether facts alleged by plaintiff make out a violation
of a constitutional right in resolving qualified immunity claims.

1 immunity, a court should first ask the following question: "Taken in
2 the light most favorable to the party asserting the injury, do the
3 facts alleged show the officer's conduct violated a constitutional
4 right?" *Saucier*, 533 U.S. at 201. "If no constitutional right would
5 have been violated were the allegations established, there is no
6 necessity for further inquiries concerning qualified immunity." *Id.*
7 "On the other hand, if a violation could be made out [under the first
8 inquiry] on a favorable view of the parties' submissions, the next,
9 sequential step is to ask whether the right was clearly established."
10 *Id.* "The relevant, dispositive inquiry in determining whether a right
11 is clearly established is whether it would be clear to a reasonable
12 officer that his conduct was unlawful in the situation he confronted."
13 *Id.* at 202. Under this standard, if a law does not put an "officer on
14 notice that his conduct would be clearly unlawful, summary judgment
15 based on qualified immunity is appropriate" for those claims stemming
16 from violations of that law. *Id.* In other words, the "contours of
17 the right must be sufficiently clear that a reasonable official would
18 understand that what he is doing violates that right." *Id.* (quoting
19 *Anderson*, 483 U.S. at 640).

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22 *Pearson v. Callahan*, --- S.Ct. ---, 2009 WL 128768. *Pearson* does
23 not prevent courts from following the *Saucier* procedure, it
24 simply recognizes that courts should have discretion to decide
25 whether that procedure is worthwhile in particular cases.
26 *Pearson* at 13. The Supreme Court held that "the judges of the
district courts and the courts of appeals are in the best
position to determine the order of decisionmaking [that] will
best facilitate the fair and efficient disposition of each case."
Id.

1 In addition, an officer is immune from suit, even when he makes a
2 constitutionally deficient decision, if he reasonably misapprehended
3 the law governing the circumstances he confronted. *Brosseau v.*
4 *Haugen*, 543 U.S. 194, 198 (2004) (citing *Saucier*, 533 U.S. at 206).
5 This exception is premised on the fact that it is sometimes difficult
6 for an officer to determine how a particular legal doctrine applies to
7 the factual situation he faces. *Saucier*, 533 U.S. at 205. In these
8 situations, if "the officer's mistake as to what the law requires is
9 reasonable . . . the officer is entitled to the immunity defense."
10 *Id.* "[Q]ualified immunity operates to ensure that before they are
11 subjected to suit, officers are on notice their conduct is unlawful.
12 *Hope v. Pelzer*, 536 U.S. 730, 739, 122 S.Ct. 2508, 153 L.Ed.2d 666
13 (2002) (internal quotation marks omitted). As a result of the
14 above-described standards, qualified immunity protects "all but the
15 plainly incompetent or those who knowingly violate the law." *Malley*
16 *v. Briggs*, 475 U.S. 335, 341 (1986).

17 Here, the Court must determine whether a reasonable officer could
18 have believed his conduct would violate Plaintiff's rights "in light
19 of the specific context of this case." *Saucier*, 533 U.S. at 201.
20 Viewing the facts in the light most favorable to Plaintiff, the
21 inquiry in this case is whether a law enforcement officer with the
22 information known to the Officers could reasonably have believed that
23 his particular conduct was lawful. Given that the Officers in this
24 case were executing a facially valid court order issued by Judge
25 Nielson when they entered Plaintiff's property, a reasonable officer
26 in the position of the Officers would have believed his conduct was

1 lawful. The Court therefore finds that the Officers are entitled to
2 qualified immunity from Plaintiff's claims, even if their entry on
3 Plaintiff's property constituted a constitutional violation.

4 Based on the foregoing, the Court finds that the Officers are
5 entitled to judgment as a matter of law on Plaintiff's claims under
6 Section 1983.

7 **B. Gerald Weeks**

8 Plaintiff appears to allege that Defendant Gerald Weeks, the Pend
9 Orieille County Sheriff, failed to adequately train and supervise the
10 Officers in the performance of their duties in executing civil orders.
11 (Ct. Rec. 45 at 3, 14-15).

12 A supervisor is only liable for the constitutional violations of
13 his subordinate if that supervisor participated or directed such
14 violations or knew of the violations and failed to act to prevent
15 them. *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675,
16 680-681 (9th Cir. 1984). Here, Plaintiff has not alleged, nor has
17 there been any evidence presented, that Defendant Weeks was personally
18 involved in or knew of the entry upon Plaintiff's property or that he
19 failed to supervise the Officers in any way. There has additionally
20 been no evidence presented to support the imposition of liability on
21 Defendant Weeks for failing to train the Officers.

22 Plaintiff must support her failure to train allegations by
23 describing the training and explaining why it was inadequate.
24 Plaintiff has not filed a statement of material facts in this case and
25 nowhere in Plaintiff's memoranda has she provided a description of the
26 training that the Officers actually received. Unless the fact-finder

1 has a clear understanding of the training that the Officers actually
2 received, the fact-finder cannot assess the adequacy of the program.
3 *See Merritt v. County of Los Angeles*, 875 F.2d 765, 770-71 (9th Cir.
4 1989) (the Ninth Circuit upheld the trial judge's decision to grant
5 judgment notwithstanding the verdict on the plaintiff's allegation of
6 inadequate training where he "did not present any evidence indicating
7 that the sheriff's department's training program . . . was in any way
8 inadequate[,] " and the "evidence presented at trial clearly and
9 unequivocally established that the training was extensive and
10 comprehensive."); see also *Price v. Sery*, 513 F.3d 962, 973 (9th Cir.
11 2008) (the Ninth Circuit concluded "the district court was correct to
12 find that even if the City's training may not have been ideal, [the
13 plaintiff] offers nothing that would establish the kind of 'conscious'
14 or 'deliberate' choice by the City to risk a 'likely' violation of
15 constitutional rights.").

16 The undisputed facts in this case fail to give rise to any
17 inference that Defendant Weeks participated in or knew of the entry
18 upon Plaintiff's property, failed to supervise the Officers properly,
19 or trained the Officers inadequately. Moreover, the facts fail to
20 give rise to an inference that it was the custom or policy of
21 Defendant Weeks to allow subordinate officers to enter private
22 property without legal justification. Based on the foregoing,
23 Defendant Weeks is entitled to judgment as a matter of law on
24 Plaintiff's claim against him.

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1 **C. Pend Oreille County**

2 Plaintiff also names the Pend Oreille County Sheriff's Department
3 as a defendant in this Section 1983 civil rights action. (Ct. Rec.
4 1).

5 Plaintiff may not recover from Pend Oreille County under Section
6 1983 on a theory of *respondeat superior*. See *Monell v. Department of*
7 *Social Services*, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036, 56 L.Ed.2d
8 611 (1978). Rather, a municipality may only be held liable under
9 Section 1983 if Plaintiff's injuries are traceable to one of the
10 municipality's policies or customs. *Monell*, 436 U.S. at 690.
11 Plaintiff is required to establish that Pend Oreille County had a
12 policy, custom or practice that was the "moving force" behind the
13 alleged constitutional deprivation. *Id.* at 694-695.; *City of Canton*
14 *v. Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989)
15 (a *Monell* plaintiff must show "a direct causal link between a
16 municipal policy or custom and the alleged constitutional
17 deprivation.").

18 Here, as noted by the County Defendants, Plaintiff has failed to
19 demonstrate that the alleged unconstitutional activity of the County
20 Defendants was pursuant to an official Pend Oreille County custom,
21 policy, or procedure. (Ct. Rec. 47 at 6-7). Municipalities may be
22 held responsible only when their official policies cause their
23 employees to violate another person's constitutional rights. *Monell*,
24 436 U.S. at 691. Plaintiff has not identified a specific policy or
25 custom that, if followed, would have resulted in the deprivation of
26 her civil rights. Because Plaintiff has failed to set forth facts to

1 establish a policy or custom existed in Pend Oreille County which was
2 violative of Plaintiff's rights in this case, no triable issue of
3 material fact exists as to this claim.

4 Likewise, there is no evidence which demonstrates that there was
5 a failure to train which amounted to any deliberate indifference. See
6 *supra*. Failure to provide adequate training may serve as the basis
7 for Section 1983 liability against a municipality "where the city's
8 failure to train reflects deliberate indifference to the
9 constitutional rights of its inhabitants." *Harris*, 489 U.S. at 392.
10 There has been no evidence presented in this case establishing that a
11 failure to train lead to a "deliberate indifference" of Plaintiff's
12 rights.

13 Because Plaintiff fails to identify a specific policy, custom or
14 practice of Pend Oreille County that was the "moving force" behind the
15 alleged constitutional deprivation or demonstrate that a failure to
16 train lead to a "deliberate indifference" of Plaintiff's rights, the
17 Court finds that Pend Oreille County is not liable as a matter of law
18 under Section 1983.

19 **D. Jessica Bodey**

20 **1. Special Needs Exception**

21 Plaintiff asserts that Jessica Bodey, in her position as GAL for
22 Edgar Bush, violated Plaintiff's Fourth Amendment rights by entering
23 her property under color of law and removing personal items without
24 the benefit of a warrant. (Ct. Rec. 45 at 2-5). However, as

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1 correctly argued by Defendant Bodey, the "special needs" exception to
2 the warrant requirement, as discussed above with respect to the County
3 Defendants, applies equally to Defendant Bodey.

4 As noted above, the "special need" was the identification and
5 retrieval of documents that would assist the GAL in identifying and
6 locating Mr. Bush's assets and identifying his treating healthcare
7 providers. *Supra.* Jessica Bodey, as court appointed GAL for Edgar
8 Bush, had been frustrated in her efforts to obtain information
9 concerning the assets and property of Edgar Bush from Plaintiff² and
10 had therefore sought the assistance of the court to obtain those
11 records and files. Defendant Bodey was acting pursuant to her
12 statutory duty as a GAL³ when she sought and obtained a court order
13 specifically authorizing the entry upon Plaintiff's property.

14 As determined above, in assessing the constitutionality of the
15 search by balancing the need to search against the intrusiveness of
16 the search, Plaintiff's reasonable expectation of privacy in her
17 residence is outweighed by the government's interest in protecting the
18 assets and health of an incompetent person in the context of
19 guardianship proceedings as well as the State Judiciary's interest in
20 maintaining the integrity of court orders issued in the context of
21 guardianship proceedings. *Henderson*, 305 F.3d at 1059. Like the
22

23 ²Plaintiff had refused to provide Defendant Bodey with an
24 accounting of funds handled and acts performed as Edgar Bush's
25 power of attorney and had refused to supply any documentation
26 relating to Mr. Bush's bank accounts or other assets and
liabilities. (Ct. Rec. 18 at 5, 18).

³See Wash. Rev. Code § 11.88.090(5).

1 County Defendants, Defendant Bodey's entry upon Plaintiff's property
2 was justified under the "special needs" exception to the warrant
3 requirement. She is therefore not liable as a matter of law for the
4 entry and search of Plaintiff's property.

5 **2. State Actor**

6 In any event, Defendant Bodey is entitled to judgment as a matter
7 of law in this case because, as a court appointed GAL, she is not a
8 state actor for purposes of 42 U.S.C. § 1983. See *Kirtley v. Rainey*,
9 326 F.3d 1088 (9th Cir. 2003).

10 Section 1983 requires a claimant to prove (1) a person acting
11 under color of state law (2) committed an act that deprived the
12 claimant of some right, privilege, or immunity protected by the
13 Constitution or laws of the United States. *Leer*, 844 F.2d at 632-33.
14 It is well established that "[t]here is no 'rigid formula' for
15 determining whether a state or local law official is acting under
16 color of state law." *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th
17 Cir. 2006). The acts of a public official are not automatically
18 considered to be under color of law merely because he or she committed
19 the act while on duty and in uniform. *Van Ort v. Estate of Michael*
20 *Stanewich*, 92 F.3d 831, 838 (9th Cir. 1996) (citing *Gibson v. City of*
21 *Chicago*, 910 F.2d 1510, 1516 (7th Cir. 1990)). Rather, a government
22 employee "acts under color of state law while acting in his [or her]
23 official capacity or while exercising his [or her] responsibilities
24 pursuant to state law." *McDade v. West*, 223 F.3d 1135, 1140 (9th Cir.
25 2000).

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1 In *Kirtley*, the Ninth Circuit determined that a GAL appointed to
2 represent the interests of a child in Washington State court custody
3 proceedings could not be considered to be acting under color of state
4 law for purposes of Section 1983 liability. *Kirtley*, 326 F.3d at
5 1088. The Court analyzed four different tests used to identify state
6 action, public function, joint action, government compulsion or
7 coercion and governmental nexus, and concluded that the actions of a
8 GAL, like those of a public defender, are not fairly attributable to
9 the state. *Id.* at 1096.

10 Here, analogous to the guardian in *Kirtley*, Defendant Bodey's
11 duty is primarily to the alleged incompetent, Edgar Bush, concerning a
12 guardianship proceeding. Defendant Bodey's responsibility as a GAL is
13 to advocate the best interests of Mr. Bush, and Mr. Bush's interests
14 are separate and distinct from those of the state. When the GAL
15 reports to the court, she reports as an independent investigator and a
16 reporter of facts, not as a proponent of the court. The GAL
17 "functions independently of the court, exercising advocacy obligations
18 that are, by law, to the [incompetent], not the court." *Kirtley*, 326
19 F.3d at 1094. Accordingly, Defendant Bodey's purpose as a GAL is to
20 support the alleged incompetent, a function independent of the court.

21 Based on the foregoing undisputed facts, Defendant Bodey's
22 function as a GAL does not satisfy the state action test. Therefore,
23 Plaintiff cannot maintain a cause of action under 42 U.S.C. § 1983
24 against Defendant Bodey.

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1 **3. Quasi-Judicial Immunity**

2 Even if Defendant Bodey, functioning as a GAL, was deemed to be a
3 state actor under Section 1983, she would still be protected from
4 liability in this case under the doctrine of quasi-judicial immunity.
5 *See Coverdell*, 834 F.2d at 764-765 (social workers enjoy absolute
6 immunity from damages when performing quasi-judicial actions); *see*
7 *also Meyers v. Contra Costa County Dep't of Social Services*, 812 F.2d
8 1154, 1156-57 (9th Cir. 1987) (absolute prosecutorial immunity
9 extended to social service case workers in initiating and pursuing
10 child dependency proceedings).

11 In *Coverdell*, the Ninth Circuit held that a child protective
12 services ("CPS") worker who executes an order for seizure and
13 placement of a child is entitled to absolute quasi-judicial immunity
14 from civil liability. *Coverdell*, 834 F.2d at 764-765. The CPS worker
15 in *Coverdell*, Defendant Barbara McLaughlin, was employed by the state
16 of Washington. Her duties included investigating and reporting cases
17 of alleged child abuse and neglect. Ms. McLaughlin had been informed
18 that the Plaintiff, Alice Coverdell, had moved into McLaughlin's
19 service region. Ms. McLaughlin was advised that Ms. Coverdell was
20 pregnant with her third child and that her parental rights to her
21 eldest child had been terminated because she and her husband were
22 emotionally unstable, easily angered, violent, and a danger to the
23 child. Ms. McLaughlin attempted to visit the Coverdell residence and
24 was denied admission to the residence. Ms. McLaughlin later received
25 information that Ms. Coverdell had given birth to a baby girl. As a
26 result of said information, McLaughlin provided the prosecuting

1 attorney with an affidavit containing the history of Ms. Coverdell's
2 circumstances which opined that the newborn child would be in danger
3 if she were to reside with the Coverdells. Without notice to Ms.
4 Coverdell, the prosecuting attorney filed a motion and order to take
5 custody of the infant child, and the court issued an order directing
6 Ms. McLaughlin to execute the order by removing the child from the
7 hospital and placing her in temporary sheltered care. *Coverdell*, 834
8 F.2d at 759-760.

9 The Ninth Circuit concluded in *Coverdell* that a CPS worker is
10 accorded absolute quasi-judicial immunity from liability for damages
11 stemming from the worker's apprehension of a child pursuant to a valid
12 court order. *Coverdell*, 834 F.2d at 765. The Court reasoned that
13 permitting the CPS worker to become "a lightning rod for harassing
14 litigation aimed at judicial orders" would seriously imperil the
15 effectiveness of state child protection schemes. *Id.* The Court
16 declared that the fearless and unhesitating execution of court orders
17 is essential if the court's authority and ability to function are to
18 remain uncompromised. *Id.* at 765. The Court found that the CPS
19 worker's actions were plainly authorized by the court's order, which
20 expressly directed the apprehension of the child, and she was thus
21 protected by absolute quasi-judicial immunity.

22 The *Coverdell* logic is applicable here. Defendant Bodey entered
23 Plaintiff's property pursuant to a civil court order. The court order
24 directed Defendant Bodey to enter into the residence Edgar Bush had
25 shared with Plaintiff prior to his hospitalization to ascertain, in a
26 reasonable manner, information regarding the finances of Edgar Bush,

1 his medical history, and family, friends, and/or contact persons.
2 Authorization was further given to take any necessary steps to secure
3 Mr. Bush's personal property to prevent its disposal or destruction.
4 Defendant Bodey, as the court-appointed GAL, entered the residence
5 pursuant to a court order, where the person she was to investigate and
6 protect had resided. Upon entry, Defendant Bodey searched for and
7 secured the documentation she was directed by court order to find.
8 Like the CPS worker in *Coverdell*, Defendant Bodey is entitled to
9 absolute quasi-judicial immunity for her actions in executing the
10 court order.

11 **4. Quasi-Prosecutorial Immunity**

12 To the extent Plaintiff is arguing that Defendant Bodey is liable
13 for her actions in seeking and obtaining the court order to enter
14 Plaintiff's property (Ct. Rec. 45), Defendant Bodey is additionally
15 entitled to absolute immunity from civil liability for this quasi-
16 prosecutorial conduct. *Coverdell*, 834 F.2d at 763-764; *Meyers*, 812
17 F.2d at 1157. Prosecutors are absolutely immune from liability under
18 Section 1983 for initiating prosecutions and other acts intimately
19 associated with the judicial phase of the criminal process. *See Burns*
20 *v. Reed*, 500 U.S. 478, 486, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991).
21 "The functions of a CPS worker in initiating and pursuing child
22 dependency proceedings are analogous to the functions of the
23 prosecutor in initiating and prosecuting criminal cases;" accordingly,
24 the Ninth Circuit has concluded that CPS workers are entitled to
25 absolute immunity for these actions. *Coverdell*, 834 F.2d at 764.
26 Defendant Bodey's conduct as the GAL for Mr. Bush is analogous to the

1 acts of a CPS worker in pursuing child dependency proceedings. She is
2 thus entitled to absolute immunity from civil liability for the quasi-
3 prosecutorial conduct of seeking and obtaining a court order in this
4 matter.

5 **E. Carol Gaherin**

6 **1. Special Needs Exception**

7 Plaintiff has additionally named as a defendant Carol Gaherin,
8 the protective payee directed by Judge Nielson's order to assist GAL
9 Bodey in the preparation of an inventory of Mr. Bush's personal
10 property and to take any necessary steps to secure that property to
11 prevent its disposal or destruction. (Ct. Rec. 1). Plaintiff asserts
12 that Defendant Gaherin entered her property in violation of her Fourth
13 Amendment rights.

14 Defendant Gaherin did not violate Plaintiff's Fourth Amendment
15 rights because, as indicated above, the "special needs" exception to
16 the warrant requirement applies in this case. *Supra*. Defendant
17 Bodey's efforts to obtain information concerning the assets and
18 property of Edgar Bush had been frustrated by Plaintiff. Therefore,
19 the "special need" was the identification and retrieval of documents
20 that would assist the GAL in identifying and locating Mr. Bush's
21 assets and identifying his treating healthcare providers. As
22 determined above, in assessing the constitutionality of the search of
23 Plaintiff's residence by balancing the need to search against the
24 intrusiveness of the search, Plaintiff's reasonable expectation of
25 privacy is outweighed by the government's interest in protecting the
26 assets and health of an incompetent person in the context of

1 guardianship proceedings as well as the State Judiciary's interest in
2 maintaining the integrity of court orders issued in the context of
3 guardianship proceedings. *Supra*.

4 Like the County Defendants and Defendant Bodey, Defendant
5 Gaherin's conduct is justified under the "special needs" exception to
6 the warrant requirement. She is thus not liable as a matter of law
7 for the entry and search of Plaintiff's property.

8 **2. State Actor**

9 In any event, like Defendant Bodey, Defendant Gaherin is entitled
10 to judgment as a matter of law in this case because, as a court
11 appointed payee directed by court order to accompany and assist the
12 GAL in her duties, she is not a state actor for purposes of 42 U.S.C.
13 § 1983. *See Kirtley*, 326 F.3d at 1088.

14 As noted above, Section 1983 requires a claimant to prove (1) a
15 person acting under color of state law (2) committed an act that
16 deprived the claimant of some right, privilege, or immunity protected
17 by the Constitution or laws of the United States. *Leer*, 844 F.2d at
18 632-33. In *Kirtley*, the Ninth Circuit determined that the actions of
19 a GAL appointed to represent the interests of a child in a Washington
20 State custody proceeding could not be fairly attributable to the state
21 and thus did not constitute state action for purposes of Section 1983
22 liability. *Kirtley*, 326 F.3d at 1095-1096.

23 As stated above, GAL Bodey represented the interests of the
24 alleged incompetent in this case, Mr. Bush. Since the interests of
25 Mr. Bush were separate and distinct from those of the state, and the
26 GAL served as an independent investigator reporting to the court, GAL

1 Bodey's activities could not be fairly attributable to the state.
2 *Supra*. Here, the role of the protective payee, Defendant Gaherin, is
3 identical to that of GAL Bodey. Defendant Gaherin was appointed as
4 protective payee and as an assistant to GAL Bodey in the court's
5 orders. Like the GAL, the protective payee owes a duty to the
6 protected party, Mr. Bush, and serves as an independent investigator
7 for the court.

8 Like GAL Bodey, Defendant Gaherin's conduct as the protective
9 payee in this case does not constitute state action. Accordingly,
10 Plaintiff cannot maintain a cause of action under 42 U.S.C. § 1983
11 against Defendant Gaherin.

12 **3. Absolute Immunity**

13 Again, like Defendant Bodey, even if Defendant Gaherin,
14 functioning as a protective payee, was deemed to be acting under color
15 of law, she would still be protected from liability in this Section
16 1983 action under the doctrine of quasi-judicial immunity.

17 As noted above, the Ninth Circuit has extended absolute quasi-
18 judicial immunity to CPS workers who execute orders for the seizure
19 and placement of children. *Coverdell*, 830 F.2d at 765. In *Coverdell*,
20 the Court reasoned that the social worker's independence would be
21 compromised should the social worker be in constant fear of a mistake
22 that would result in a time consuming and financially devastating
23 civil suit. *Id.* The Court also stated that the fearless and
24 unhesitating execution of court orders is essential if the court's
25 authority and ability to function are to remain uncompromised. *Id.*

26 ///

1 Here, Defendant Gaherin, a court appointed payee, acting in
2 conjunction with a court appointed GAL, enforced a court order
3 permitting entry into Plaintiff's residence to obtain information on
4 behalf of Mr. Bush, when those efforts to obtain that information had
5 previously been frustrated by Plaintiff. The functions of the social
6 worker in *Coverdell* are analogous to those of the GAL and the
7 protective payee working in conjunction with the GAL in this case.
8 Like the CPS worker in *Coverdell* and Defendant Bodey in this case,
9 Defendant Gaherin is entitled to absolute quasi-judicial immunity for
10 her actions in carrying out the court order.

11 **CONCLUSION**

12 Based on the foregoing, **IT IS HEREBY ORDERED that** Defendants'
13 motions for summary judgment (**Ct. Rec. 8, 17, 38**) are **GRANTED**.
14 Judgment shall be entered in favor of Defendants, and Plaintiff's
15 action shall be dismissed in its entirety.

16 **IT IS SO ORDERED.** The District Court Executive is hereby
17 directed to enter this order, provide copies to Plaintiff and counsel
18 for Defendants, **enter judgment in favor of all Defendants** and **CLOSE**
19 **THE FILE.**

20 **DATED** this 9th day of March, 2009.

21 S/Fred Van Sickle
22 Fred Van Sickle
23 Senior United States District Judge
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